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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ARGO TURBOSERVE CORPORATION,

Plaintiff,

versus

DEAN ANGELLE AND DENISE ANGELLE,

Defendants.

**CASE NO. 07 CIV 8410 (RMB)
(GWG)**

ECF

**DEFENDANTS' MOTIONS TO
DISMISS PLAINTIFF'S
AMENDED COMPLAINT AND
ALTERNATIVELY FOR STAY**

NOW COME Defendants, Dean Angelle and Denise Angelle (collectively, "the Angelles"), who pursuant to Rules 12(b)(1), 12(b)(6), and 12(b)(7) of the Federal Rules of Civil Procedure, file their Motions to Dismiss Plaintiff's Amended Complaint and Alternatively for Stay. As set forth more fully in the memorandum filed in support of these motions, this suit remains *premature* because Plaintiff failed to satisfy an express precondition to seeking indemnification under the Stock Purchase Agreement, namely denying the Angelles reasonable access to personnel, information, and documentation allegedly supporting Plaintiff's claims for

indemnification. This action must therefore be dismissed pursuant to Rule 12(b)(6) for failing to state a claim upon which relief may be granted. In the alternative, the Angelles respectfully request a stay of the present proceedings until such time as the Angelles have properly and fully exercised their rights under Section 9.3(b) of the Stock Purchase Agreement. Additionally, at least four of Plaintiff's claims for relief are duplicative of its claim for indemnification. Since indemnification represents the *exclusive* remedy available under the Stock Purchase Agreement and because Plaintiff's other claims are supported by the same facts as its claim for indemnification, Plaintiff's claims for fraudulent inducement, breach of the employment agreement, breach of fiduciary duty, and indemnification for losses incurred under the lease, should be dismissed for failing to state a claim upon which relief may be granted. Plaintiff also failed to adequately plead its claim of fraudulent inducement with particularity as required by Rule 9(b) of the Federal Rules of Civil Procedure. As such, the claim of fraudulent inducement and the other duplicative claims must be dismissed pursuant to Rule 12(b)(6) for failing to state a claim upon which relief may be granted.

Moreover, as Plaintiff lacks standing to assert any claim for losses allegedly incurred under the Lease Agreement between non-parties to this proceeding, this claim must be dismissed pursuant to Rule 12(b)(1). Plaintiff also failed to join a necessary and indispensable party, D&D Pipe and Rentals, Inc. ("D&D Pipe"), to the proceedings. As D&D Pipe cannot be joined without divesting this Court of jurisdiction, this Court must dismiss this suit pursuant to Rule 12(b)(7).

WHEREFORE, for the reasons more fully set forth in the accompanying memorandum in support, Dean Angelle and Denise Angelle respectfully request that their Motions to Dismiss be granted and that Plaintiff's Amended Complaint be dismissed with prejudice. Alternatively,

the Angelles respectfully request that this action be stayed until they have been able to properly and fully exercise their express rights under the Stock Purchase Agreement.

Respectfully Submitted,

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AND

/s/ Eric Michael Liddick

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***Attorneys for Dean Angelle and Denise Angelle,
Defendants***

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been forwarded this day to counsel of record for Plaintiff, Argo Turboserve Corporation, ☒ by CM/ECF, ☒ by e-mail, ☐ by telefax, ☐ by hand, and/or ☐ by United States mail.

New Orleans, Louisiana, this 3rd day of March, 2008.

/s/ Eric Michael Liddick

ERIC MICHAEL LIDDICK